IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 53 OF 1987

Balu Natha Repe
R/o. Valivade, Taluka: Karvir,
Dist. Kolhapur. ... Appellant.

Versus.

Smt.Kamalaben Natha Repe
(deceased by her heirs)
1. Smt.Yesabai w/o.Ramchandra Nethe
(since deceased by LRs.)

A) Ramchandra Nana Methe,
Age: 76, Occ.: Agriculturist,
R/o. At Post Vashi, taluka Walwa,
Dist.Sangli.
B) Shankar Ramchandra Methe,
Age: 33, Occ.:Agriculturist,
R/o.At Post Vashi, Kedegaon,
Tal: Walwa, Dist.Sangli.
C) Kamal Babab Khot,
Age: 35, Occ.:Housewife,
R/o.At Post Rethredharang,
Tal.:Walwa, Dist.Sangli
(Appeal against 1-B & 1-C stands
dismissed for want of prosecution
vide Court's order dt.9.7.2004)

2. Smt.Savubai w/o.Dattui Methe,
R/o. Vashi, Taluka: Walve,
Dist: Sangli.

3. Smt.Bayakkabai w/o.Baburao Redekar,
(Since deceased through LRs.)
A. Smt.Housabai Bapu Chavan,
Adult, R/o. at & Post: Valivade,
Tal: Karvir, Dist. Kolhapur.

4. Jalandar Dattu Methe, Adult.

5. Babasaheb Ramchandra Methe, Adult,
both Agriculturists, residing at
Walivade, Tal: Karvir, Dist.Kolhapur. ...Respondents

Shri P.R.Patil for the Appellant.

Shri S.S.Pandit for the Respondents Nos.2 to 5.

CORAM : ABHAY S.OKA, J.

DATED : 27th January, 2005.

ORAL JUDGMENT.

1. This Appeal is preferred by the original Defendant No.1. A suit for partition and separate possession was filed by the Respondent which has been decreed by the trial Court and the said decree passed by the trial Court has been confirmed in an Appeal preferred by the Appellant/Defendant No.1. The original Plaintiff No.1 Kamlabai is the widow of deceased Natha. The original Plaintiffs Nos.2 and 3 and Defendant No.2 are the married daughters of the deceased Natha. The Defendant No.1 is the adopted son of the Plaintiff No.1 and the deceased. The original Defendant No.2 is stated to be the real mother of the Appellant-Defendant No.1. The said Natha expired on 8th January 1968. In the suit for partition a contention is raised by the original Plaintiffs that they along with the original Defendant No.2 are the only legal representatives of the deceased Natha. The Plaintiffs challenged the deed of adoption made in favour of the Defendant No.1. The trial Court held that the deed of adoption was valid and the Defendant No.1 was the adoptive son. Applying section 8 of the Hindu Succession Act, 1956, the learned trial Judge held that the parties were entitled to 1/5th share

each in the suit lands. The said decree has been confirmed by the Appellate Court. It appears that during the pendency of the Appeal, the Plaintiff No.1 i.e. the adoptive mother of the Defendant No.1 expired.

2. This Second Appeal was admitted on 2nd February 1987 by framing the following substantial question of law:

> "Heard. The Appeal involves substantial question of law regarding succession. Hence admitted."

3. The learned Counsel appearing for the Appellant submitted that the finding of the Courts below is that the Plaintiffs and the Defendants are legal representatives of the deceased husband of the Plaintiff No.1 having 1/5th share each. He submitted that as a result of demise of the Plaintiff No.1 during the pendency of the Appeal, the 1/5th share of the deceased Plaintiff No.1 will devolve on the Plaintiffs Nos.2 and 3 and Defendants Nos.1 and 2 by virtue of section 15 of the Hindu Succession Act, 1956. He, therefore, submitted that to that extent modification is required to be made in the impugned decree of the trial Court.

4. The learned Counsel appearing for the Respondents has fairly stated that such modification deserves to be made.

5. In view of this position, I pass the following order:

(i) The Decree of the trial Court stands substituted by the following decree:

(a) The Plaintiffs Nos.2 and 3 and the Defendants are entitled to 1/4th share each in the suit lands.

(b) The partition of the suit lands is to be effected by the Collector or any Gazetted Subordinate of the Collector deputed by him in this behalf in accordance with the law for the time being in force relating to the partition and separate possession of shares of each estate under section 54 of the Code of Civil Procedure, 1908.

(c) The mesne profits of the shares of the Plaintiffs from the date of the suit till they get actual possession of their shares shall be determined by holding a separate enquiry under Order XX Rule 12(1)(c) of the Code of

Civil Procedure.

(ii) The Second Appeal is partly allowed accordingly.

(iii) Parties will bear their own costs throughout.

Judge.